

United States Court of Appeals For the First Circuit

No. 22-8025

ZURICH-AMERICAN INSURANCE CO.,

Plaintiff - Respondent,

v.

MEDICAL PROPERTIES TRUST, INC.,

Defendant - Petitioner.

Before

Barron, Chief Judge,
Lynch and Montecalvo, Circuit Judges.

JUDGMENT

Entered: February 17, 2023

Pursuant to 28 U.S.C. § 1292(b), the district court certified that a previously entered order granting one motion for partial summary judgment and denying another "involves a controlling question of law as to which there is substantial ground for difference of opinion" and "that an immediate appeal from the order may materially advance the ultimate termination of the litigation." In doing so, the district court identified the following legal question: "whether rainwater that lands and accumulates on a parapet roof one or more stories above the ground is 'surface water,' as that term has been defined by the Massachusetts Supreme Judicial Court." Petitioner then filed a petition for permission to appeal with this court.

We express no view whatsoever as to relevant issues, but, having considered the district court's ruling and the parties' filings with this court, we conclude that review is in order. The petition for permission to appeal is **granted**, and the summary judgment ruling at district court docket number 55 is certified for appeal. The appeal shall proceed as Appeal 23-1167. All papers filed in Appeal 22-8025 will be treated as if also filed in Appeal 23-1167.

A briefing schedule will be entered in due course. The court also has granted a petition for permission to appeal in related case Appeal 22-8026. Any motion to consolidate the newly opened appeals should be filed promptly.

By the Court:

Maria R. Hamilton, Clerk

cc:

Hon. Patti B. Saris

Robert Farrell, Clerk, United States District Court for the District of Massachusetts

Martin C. Pentz

Creighton Page

Natalie Frances Panariello

Dale Jefferson

Michael Menapace

David R. Roth